

REMARKS

Independent claims 1 and 14 have been rejected under Section 102 based on United States Patent Number 4,807,770 (Barriac) and under Section 103 based on United States Patent Number 3,913,772 (Ochs 772) in view of United States Patent Number 4,066,181 (Robinson). This response does not address the grounds for rejection of only dependent claims because Applicants submit that the amended and new independent claims are in condition for allowance.

Claims 1 and 14 are amended by this response to recite that “in the first state the disk is not tightly secured to the band” and that is in a “second state” that the contact means engage the curl to secure the band to the disk. This amendment is supported by the Figures, such as Figures 1, 4, 7, and 8 and corresponding text, and by the specification’s text, such as by paragraphs 0030 and 0043. In addition to amendment to the last clauses of claims 1 and 14, claim 1 is amended to recite that the disk is “for disposing on the container neck” and claim 14 is amended to recite “the disk is capable of being positioned on a container neck” for clarity. Neither of the latter amendments narrows the scope of any limitation.

New independent claim 29 is supported throughout the specification. New independent claim 30 is supported throughout the figures and text, such as by paragraphs 0027 and 0033. New dependent claims 31 – 33 are supported at least by paragraph 0027 and the figures.

Response to the Objection to Claim 28

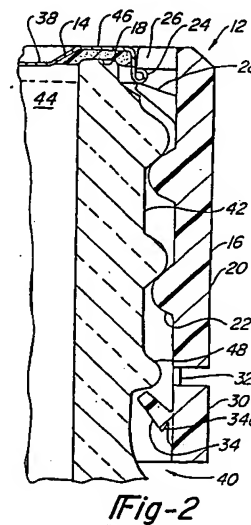
Claim 28, which was determined to be allowable, is amended to incorporate all of the limitations of independent claim 27. Claim 27 is cancelled in this response to render the double patenting rejection moot. Applicants submit that claim 28 is in condition of allowance.

Response to the Rejection of Independent Claims 1 and 14

Barriac discloses a closure “made up of a metallic lid portion 14 and a plastic, lid-retaining ring portion 16 which secures the lid portion 14 to the rim 46 of the container 40” (Barriac, column 5, lines 1 – 4). The closure includes “flanges 26 being adapted to engage the top of the curl 24 of the lid portion 14 of the closure, and the flexible tabs 28 being adapted to engage the bottom of the curl 24.” Barriac does not show, among other things, fins having a “first state [in which] the disk is not secured to the band” and a “second state [in which] the fins engage the curl to secure the band to the disk,” as recited in amended claims 1 and 14. Rather, consistent with Barriac’s figure 2 reproduced at right, disk 14 is “securely interengaged” between flanges 26 and tabs 28 even before the closure is applied to the container:

By virtue of the flexibility and the oblique orientation of the flexible tabs 28, the lid portion 14 may be assembled into the lid-retaining ring portion 16 by moving it upwardly through the ring portion 16, an action which will deflect the flexible tabs 28 until the curl 24 of the lid portion 14 passes thereover, at which time each of the flexible tabs will spring back to its normal orientation as shown in FIGS. 1 and 2, where the flexible tabs 28 cooperate with the flanges 26 to securely interengage the lid portion 14 and the lid retaining ring portion 16.

(Barriac, column 5, line 66 – column 6, line 8)



Accordingly, Applicants submit that claims 1 and 14 are patentably distinguishable over Barriac because (among other things) Barriac neither teaches nor suggests structure, recited in claim 1 and claim 14, in which “in the first state the disk is not secured to the band and in the second state the fins engage the curl to removably secure the band to the disk”

Amended claims 1 and 14 are also patentable over Ochs 772 in view of Robinson because combining these references, even if appropriate, would not produce the claimed structure. For example, Ochs 772 discloses an annular groove “for receiving the outer edge 5 of the cap cover 2” (Ochs 772, column 2, lines 53 – 56), but the figures of Ochs 772 illustrate that the edge 5 of the cover 2 is not secured to the band. And modifying the structure of Ochs 772 according to the teaching of Robinson does not produce Applicants’ claimed structure.

In this regard, Robinson discloses ribs 18 “which have interior surfaces 19 curved concavely to match the convex curvature of the periphery of the disc 14 with a snap fit. The disc may be thus preassembled to the closure 10 for purposes of shipment and ultimate assembly the container 12.” (Robinson, column 2, lines 53 – 62). By this statement, Robinson discloses that its disk is held in a “snap fit” upon assembly rather than disclosing a closure in which “in the first state the disk is not tightly secured to the band and in the second state the contact means engage the curl to secure the band to the disk,” as recited in Applicants’ claims 1 and 14. Accordingly, even if the apparently contradictory teachings of Ochs 772 and Robinson could appropriately be combined, about which Applicants reserve argument as it is unnecessary here, the resulting combination would not yield Applicants’ claimed structure.

New Independent Claims

New independent claim is similar to amended claim 14, except the text “plural fins extending inwardly from the skirt” of claim 14 is replaced with the text “contact means located on an interior portion of the skirt.” The limitation “contact means” is presented under Section 112 Para. 6 because it recites function(s) without the structure for carrying out the function(s). Applicants submit that claim 29 is allowable for the reasons stated above for claim 14.

New independent claim 30, unlike independent claims 1, 14, and 29, does not recite that “in the first state the disk is not tightly secured to the band,” but recites “at least one upper contact member extending inwardly from the skirt” and “a contact surface that *consists essentially of* a downwardly-and-inwardly-facing surface.” The phrase “consists essentially of” is employed to cover a contact surface that includes the recited structure and that which does “not materially affect the basic and novel characteristic(s) of the claimed invention.” (M.P.E.P. § 211.03) (citations and internal quotations omitted).

Claim 30 further recites that the downwardly-and-inwardly-facing surface “has a first, as-molded state prior to application of the closure onto the container and a second, fully applied state in which the contact surface deformably receives at least a portion of the curl upon application of the closure onto the container; whereby in the second state the oblique surface engages the curl to secure the band to the disk.” Applicants submit, consistent with

DOCKET NO.: CC-3581
Application No.: 10/721,029
Office Action Dated: June 29, 2005

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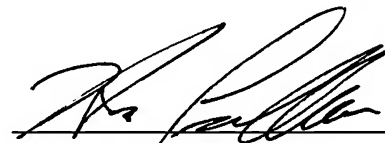
the above explanation, that neither Barriac, Ochs 772, nor Robinson teach or suggest such structure. Accordingly, Applicants submit that new claim 30 and its dependent claims are in condition for allowance.

CONCLUSION

Applicants submit that amended independent claims 1 and 14 and new independent claims 29 and 30, as well as all the dependent claims, are in condition for allowance based on at least the above grounds. Claim 28 is rewritten in independent form in accordance with the pending Office Action.

If the Examiner determines that a telephone conference would further the prosecution of this case, he is invited to telephone the undersigned at his convenience.

Date: December 29, 2005



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